to play the game of badminton at which he is proficient but not with the same vigour and success as before the accident.

His loss can, therefore, be comprised under the heads of pain and suffering and life-long disability not in any way involving invalidism and not in any way affecting earning power but to some extent affecting amenity and the enjoyment of living.

Applying my mind to these facts and given the matter my best attention (and I can do no more) my view is that a suitable sum by way of compensation would be $8,500. It is unnecessary to recapitulate the relevant authorities which have been quoted again and again in this Court. In my view that difference between $8,500 and the amount of $15,000 awarded by the trial Judge is sufficient to justify this Court in interfering.

The result, therefore, is that as regards liability I would dismiss the appeal. As regards damages I would allow it to the extent of reducing the amount of the general damages from $15,000 to $8,500.

Barakbah J.A. and Neal J. concurred.

Order accordingly.

Solicitors:—*Skrine & Co.; Murphy & Dunbar.*

ABDUL MAJID v. PAHANG LIN SIONG MOTOR CO. LTD. & ANOR.

[C.A. (Thomson C.J., Barakbah J.A., Neal J.) August 22, 1963]

[K.L. — F.M. Civil Appeal No. 24 of 1963]

Damages—Personal injury—Hip—Dislocation of—Leg—Fracture—Shortening—Limited flexion of knee—Limitation of extension—Wasting of thigh muscle.

Damages—Assessment of—Application of wrong principle—Misapprehension of fact.

The appellant, a 23 year old itinerant hawker, suffered personal injuries in consequence of a motor vehicle accident. He had a dislocation of the right hip and a fracture of the acetabulum. There was a fracture of the lower end of the right femur with injuries to the right sciatic nerve. His condition at the time of the trial was, *inter alia*, a 1 inch shortening of the right leg and 40% flexion of the right knee.

Liability was admitted and he was awarded $10,000 general damages and $1,870 special damages.

On appeal against the award on general damages,

Held: (1) the amount of damages awarded was inadequate;

(2) there has been a misapprehension of facts in that the learned trial judge had paid insufficient, if any, regard to the question of probable loss of earnings;

(3) damages assessed at $18,000.

Case referred to:—

Scott v. *Musial* [1959] 2 Q.B. 429, 437.

COURT OF APPEAL.

H. E. Cashin (*T. M. Yap* with him) for the appellent.

P. J. Mooney for the respondents.

Thomson C.J. (delivering oral judgment): The appellant in this case suffered personal injuries in consequence of a motor vehicle accident in which he was involved. He sued the owner and the driver of the vehicle in negligence. Liability was admitted and in consequence the only issue at the trial was the quantum of damages. In the event he was awarded special damages amounting to $1,870 and $10,000 general damages.

With regard to the special damages there is no complaint. He has, however, appealed against the amount of the general damages on the ground that these are inadequate.

Before proceeding further I would remind myself of the following observations by Morris L.J. in the case of *Scott* v. *Musial* [1]:—

> "it is recognised that the fixation of damages is so largely a matter of opinion or of impression that differences of calculation or assessment are to be expected. There is, to some extent, an exercise of judicial discretion. It is for this reason that, if three judges of the Court of Appeal consider that the amount of general damages that they would have awarded would have been a figure different from that decided by the trial judge, they will not, for that reason alone, give preference to their own figure; they will only do so if satisfied that the judge has acted on a wrong principle of law or has misapprehended the facts, or has, for those or other reasons, made a wholly erroneous estimate of the damage suffered:"

My own view is that in this case the amount of damages awarded was inadequate. I think, further, there has been a certain amount of misapprehension of facts on the part of the trial Judge and it would, therefore, be proper for this Court to review the award.

The facts are (and as far as I can ascertain they are indisputed facts) that the appellant suffered very severe injuries and in consequence was in hospital for periods amounting in the whole to over eight months. He had a dislocation of the right hip and a fracture of the acetabulum. There was a fracture of the lower end of the right femur with injury to the right sciatic nerve. These were his injuries as described by a medical witness at the time of the accident, which was in December 1960. His condition in consequence of these injuries at the time of the trial in March 1963 was that:—

"The right leg is markedly weak and 1" shortened. There is a good range of movement in the right hip but there is pain at extremes of movement. The right knee is badly disorganised. There is only 40° of flexion instead of 135 — 140°. There is about 5° limitation of extension. There is pain on movement. One of the fractured ends is jutting beneath the skin. There is wasting of the thigh muscles and loss of sensation of the outer aspect of lower leg. Partial recovery from the sciatic nerve. The patient was walking with the aid of a crutch when I saw him. Knee is unstable. He could do sedentary work by the end of 1961. I think an operation to fuse the knee is necessary which means to make it completely rigid.

When I first saw him I was not of the opinion that plaintiff could never be able to walk again. I cannot say that plaintiff is making steady recovery."

So much for the injuries.

The other relevant facts are that the appellant is a young man, aged 23; that he is married and that prior to the accident he made a living as an itinerant hawker of a drink known as "chendul" which he hawked round mines and schools. On all that, considered by itself, I would say that $10,000 is an inadequate amount of compensation and when I turn to the learned Judge's grounds of judgment I come to the conclusion that he has paid insufficient, if any, regard to the question of probable loss of earnings.

As I have said, the appellant was an itinerant drink seller. He said he made a profit of $300 a month out of that occupation. I think it was conceded yesterday by his own counsel that was a probably very much exaggerated figure. Nevertheless that was how he made his living and clearly he cannot make it in the same way now with the injuries which he has suffered. The Judge dealt with the matter by saying that he can still sell his drinks from a stall instead of hawking them around. That may well be. There is, however, no evidence whatsoever to suggest that selling these drinks from a stall will be as profitable as selling them in the itinerant way in which he was selling them before his accident.

As I have said, the appellant is 23 years of age. No doubt he will adapt himself to his injured condition with less difficulty than would an older man. No doubt if he is a person of ordinary human capacity he will work out some way of making an adequate living. But clearly for some time his earning capacity and his earnings are going to be diminished and in my opinion that consideration has either been altogether overlooked by the trial Judge or given inadequate weight.

Bearing everything in mind pain and suffering, loss of amenity and probable loss of earnings arising from certain (though perhaps temporary) diminution of earning power, I would myself assess the damages at $18,000 and I would allow the appeal to that extent with costs.

Barakbah J.A. and Neal J. concurred.

Appeal allowed.

Solicitors:—*Murphy & Dunbar; Skrine & Co.*

LEE AH CHYE v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Barakbah J.A. and Gill J.) August 27, 1963]

[K.L. — F.M. Criminal Appeal No. 22 of 1963]

Criminal Law—Penal Code ss.84, 302—Murder—Plea of insanity—Reading of s.84 to the Jury—Whether a misdirection—Burden of proof.

Though some sections of the Penal Code are extremely abstruse and it would be wrong to expect a jury or any other body of laymen to come to any very definite conclusion regarding the meaning without considerable assistance from the Judge, section 84 is not one of these sections and the reading of it to a jury is an adequate direction subject to this that where there is a considerable body of conflicting evidence it may be necessary to indicate its application to particular parts of the evidence.

Observations on the burden of proof in cases of insanity.

Cases referred to:—

(1) *Rex* v. *Baskerville* [1916] 2 K.B. 658, 667.

(2) *Azro* v. *Public Prosecutor* [1962] M.L.J. 321, 322.

(3) *Chia Chan Bah* v. *The King* [1938] M.L.J. 147.

(4) *Rex* v. *Sodeman* [1936] 2 All E.R. 1138.

COURT OF APPEAL (CRIMINAL).

R. Ponnudurai for the appellant.

Gunn Chit Tuan (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment): This appellant was convicted at Penang for murder in contravention of section 302 of the Penal Code and was sentenced to death. Against that conviction he has now appealed.

At the trial there was really very little controversy as to the facts.

A married woman named Wong Ah Tai, who was some sort of a domestic servant and who ran a tontine in her spare time, was stabbed to death. Twenty-two stab wounds were inflicted on her body. At the same time her daughter, a girl of about twelve years of age, was also stabbed but not fatally.

It has never been in dispute that the stab